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| 09/840,332      | 04/23/2001  | Jerald A. Hammann    | H238.101.101        | 4071             |

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FIFTH STREET TOWERS  
100 SOUTH FIFTH STREET, SUITE 2250  
MINNEAPOLIS, MN 55402

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| EXAMINER |
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RINES, ROBERT D

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| ART UNIT | PAPER NUMBER |
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3623

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06/18/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/840,332 | <b>Applicant(s)</b><br>HAMMANN, JERALD A. |  |
|                              | <b>Examiner</b><br>R. David Rines    | <b>Art Unit</b><br>3623                   |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/15/09, 6/1/10.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 31-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Notice to Applicant***

[1] This communication is in response to the amendment filed 15 December 2009 and the Amendment After Final Rejection filed 1 June 2010. Claims 1-30 have been cancelled. Claims 31-35 have been amended. Claims 31-40 are pending.

### ***Response to Remarks***

[2] Applicant's remarks filed 1 June 2010 are persuasive. Accordingly, previous rejection(s) under 35 U.S.C. 103(a) in which teachings provided by the Hoffman et al. reference are hereby withdrawn. New grounds of rejection are entered below.

### ***Withdrawal of Final rejection***

[3] Applicant's request for reconsideration of the finality of the rejection mailed 31 March 2010 is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[4] Claims 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hailpern et al. (U.S. 6,922,672) in view of Deitrich et al. (United States Patent#6,630,070).

As per (currently amended) claim 31, Hailpern et al. teaches a computer-based method for capacity/demand management in human factor resource industries, comprising:

accepting, via computer, transaction parameter values for resources, wherein each resource has associated therewith at least a service location and at least one of a service date and a service time (See column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45, wherein parameter values are received from a business regarding a resource, wherein the parameter values represent the promotional or other deal with which a resource is being sold. The resource has associated therewith a service location and a time period for the transaction. See also see column 5, lines 1-6. Hailpern et al. discloses a store, geographic location, and area);

accepting from at least one potential user of resources, via computer, at least one resource transaction parameter value other than the potential user's geographic location (See column 2, lines 27-36, column 3, lines 50-55, column 5, lines 1-6, wherein customer's behavior and information is monitored via the computer system, wherein this information includes profile information, past buying history, etc.);

communicating to the at least one potential user of the at least one resource at least a portion of the transaction parameter values for at least one resource related to the potential user's at least one transaction parameter value (See figure 3, column 2, line 59-column 3, line 10, and column 4, lines 20-25, wherein a promotion with transaction values is communicated to a user);

modifying, in response to the communication at least one of a demand for the at least one resource and a capacity of the at least one resource, wherein when the capacity exceeds the demand for the at least one resource, the modifying includes increasing the demand for and/or decreasing the capacity of the at least one resource (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, wherein the communication causes a modification to the demand for the resource. This is done because the capacity and inventory of the resource exceeds the demand by consumers for the resource);

wherein the at least one service date and service time is a date and/or time point or range measure indicating a present or future first date and/or time when the service is available (See column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45, wherein there is a timeframe from the moment the promotion is communicated to its expiration representing when the product/service is available);

wherein the at least one service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one resource, wherein the at least one service provider resource is a human resource, wherein the at least one service provider resource contributes more than a nominal amount of time producing and/or making available the at least one resource (at least col. 2, lines 37-65 teach providing services, or a service provider resource; col. 2, lines 37-65 teach a business providing services, or the service providers as human resources because a business providing services inherently contains human resources providing the services on some level; and the business contributes more than a nominal amount of time making available the at least one resource);

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized resources to the at least one potential user (See column 3, lines 1-5, wherein the promotion is communicated to the user prior to the use of a concurrent resource, where a product must be purchased with another product);

wherein the capacity of the at least one resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, which discusses capacity of a resource (i.e. good/service) at given periods of time. Capacity is the ability to produce, perform, deploy, or to make output, a maximum amount);

wherein the measure of an ability to produce and/or make available additional quantities of the at least one resource over a first date and/or time period beginning at the first date and/or

time and ending at a second date and/or time is derived from at least one human factor resource and is not a static ability (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, which discusses service capacity, wherein service is performed by human resources); and,

wherein the demand for the at least one resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period (See column 2, lines 37-65, wherein demand is discussed in terms of current (demand is low) and future (moving the item over time in a dynamic environment)).

However, Hailpern et al. does not expressly disclose that the resources are composite resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, whether the resource is a composite resource or resource does not appear to functionally effect the limitations of the claim. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers).

Claim 31 has been amended with respect to the "...accepting...transaction parameter values...". Specifically, the limitation has been amended to remove "at least one of..." language to specifically require the "...each composite resource has associated therewith at least a service location, a service date and a service time...".

The remainder of claim 31 has been amended to specify a "date and time" in contrast to the previously presented alternative language of "date and/or time".

As per this element, while Hailpern discloses a time frame, Hailpern fails to provide specific recitation that the time frame includes a "service time and a service date" as presented in amended claim 31.

However, as evidenced by Deitrich et al., the designation of a time frame for an inventory forecast including a specified start date and time and an end date and time, is well known in the restaurant supply chain management art (Deitrich et al.; Abstract, col. 6, lines 26-50, col. 35, lines 18-67 and col. 36, lines 1-11 \*see selection of shipping and inventory dates).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the generalized designation of a time frame disclosed by Hailpern with the well known practice of inputting a designation of a specific start time and date as well as an end time and date for a supply forecast as taught by Deitrich et al. with a reasonable expectation of successfully defining a time frame for analysis of past promotions (Deitrich et al.;



col. 35, lines 18-67 and col. 36, lines 1-11). Further motivation would have been to fill supply orders in a manner which maximizes profit and reduces on-hand inventory (Deitrich et al.; col. 2, lines 50-55).

Claim 32 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above. Hailpern et al. discloses a system with means in at least figures 1C and 2, and column 3, lines 45-67.

Claim 33 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above in the rejection of claim 31. Hailpern et al. further teaches a storage device storing a program and a processor connected to the storage device and controlled by the program, the processor operative with the program (column 4, lines 1-17).

Claim 34 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above in the rejection of claim 31. Hailpern et al. further discloses storing data related to resources (See column 4, lines 1-17). However, Hailpern et al. does not expressly disclose composite resources or constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Hailpern et al. further discloses memory and storing

data associated with the system, as well as maintaining inventory and service capacity information concerning resources. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, relational databases are old and well known in the art and link stored data that is related together for more efficient storage and access speed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers). Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to include internal data structures that link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources in order to increase the efficiency of storing and accessing the data by using relational database technology.

Claim 35 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above in the rejection of claim 31. Hailpern et al. further teaches receiving a responding communication from at least one user binding the at least one resource with specified transaction parameter values (See column 2, line 55-column 3, line 5, wherein the user responds to the promotion and buys a product/service resource).

As per claims 36-40, Hailpern et al. discloses that when demand exceeds the capacity for the at least one resource, the modifying includes decreasing demand for the at least one resource

and/or increasing the capacity of the resource (Examiner notes that since Hailpern et al. teaches above that capacity exceeds demand, this limitation does not specifically occur (i.e. is not required). However, see column 2, lines 37-60, which discloses when demand is high, but there is low capacity/inventory).

However, Hailpern et al. does not expressly disclose that the resources are composite resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, whether the resource is a composite resource or resource does not seem to functionally effect the limitations of the claim. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers).

***Response to Remarks***

[4] Applicant's remarks with respect to the Double Patenting rejection have been noted.

Applicant's arguments with regards to Hailpern et al. (U.S. 6,922,672) and the recited "service time and service date" presented by amendment are moot in view of newly added grounds of rejection.

Applicant remaining remarks substantially rehash arguments addressed in the previous response and are deemed to have been addressed in the preceding sections of the instant Office Action and in the previous Office Actions mailed 15 September 2009, 10 March 2009, and 28 July 2008.

***Double Patenting***

[5] The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 31, 32, 33, 34, 35, and 36-40 are **provisionally** rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only modifications between the claims are the intended field of use and a wherein clause concerning the measure of an ability to produce and/or make additional quantities available.

Claim 31 of the current application recites “wherein the measure of an ability to produce and/or make available additional quantities [...] is derived from at least one human factor resource and is not a static ability” which is not recited in claim 1 of the copending application. First, both claims recite “an ability to make available additional quantities”, and thus the fact that the measure is not static is obvious in light of this language because the “ability to make available additional quantities” is a dynamic quality. Therefore, the modification of the current application to include that the ability to make available additional quantities is not static is respectfully considered obvious to one of ordinary skill in the art at the time of the invention. Second, the limitation of the current application “wherein the measure of an ability to produce and/or make available additional quantities [...] is derived from at least one human factor resource” does not include any functional significance as to how or why the composite resource is related to at least one human factor resource. It is well known in the art that many composite resources are associated with a human factor, such as resources being related to human scheduling, calculation, and ability to manufacture, to name a few examples. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include an association between the composite resource and a human factor resource in order to more accurately measure the ability to make available the composite resource by considering all factors associated with this ability, such as human error. Examiner notes that the fact the claimed invention in the human factor resource industry is an intended field of use that has no functional significance on the claim, as currently recited.

Claims 32, 33, 34, and 35 of the current application and claims 7, 12, 17, and 22, respectively, of the copending application have the same, obvious modifications there between as

claims 31 and 1. Therefore, although these conflicting claims are not identical, they are not patentably distinct from each other, as discussed above.

Claims 36-40 of the current application and claims 66-70, respectively, of the copending application are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. David Rines whose telephone number is (571)272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. David Rines/  
Primary Examiner, Art Unit 3623